



**COMMONWEALTH OF MASSACHUSETTS**  
**Board of Registration**  
**of**  
**Hazardous Waste Site Cleanup**  
**Professionals**

ONE WINTER STREET, 3rd Floor  
BOSTON, MA 02108  
PHONE: 617-556-1091 FAX: 617-292-5872

**PROFESSIONAL CONDUCT COMMITTEE**  
**Minutes of Meeting on September 30, 2009**  
[Approved on October 29, 2009]

**Prepared by:** Terry Wood

**Meeting Location:** Buttonwood Park Zoo, 425 Hawthorn Street, New Bedford, MA.

- 1. Call to Order:** Robert Luhrs called the meeting to order at 12:55 p.m. Also present were Gail Batchelder, Janine Commerford, Deborah Farnsworth, Kirk Franklin, Jack Guswa, Gretchen Latowsky and Debra Stake. Committee members absent: Christophe Henry, Kelley Race and Debra Stake. Staff members present were Brian Quinlan, Lynn Read, Terry Wood and Al Wyman. Also present were Wes Stimpson of the LSP Association and Deborah Marshall of MassDEP.
- 2. Announcements:** Ms. Commerford announced that Executive Director Allan Fierce will be retiring from the Board effective December 1<sup>st</sup>.
- 3. Previous Minutes:** The draft minutes of the meeting held on August 19th were approved.
- 4. Old Business**

**A. Status of CRTS**

At Mr. Luhrs' request, the chair of each CRT reported on progress made since the August meeting.

**B. Report from Screening Team re: 09C-02**

The members of the screening team in attendance (Mr. Franklin and Ms. Commerford with Al Wyman as staff investigator) recommended that the Committee dismiss the complaint without investigation by a Complaint Review Team because additional documentation reviewed by the screening team did not support the allegations in the complaint. The complaint was filed by a private party and alleged that the LSP had referred to a bogus

Release Tracking Number in a Phase I submittal and had also made several misrepresentations in a Response Action Outcome regarding the source of the release, whether a particular catch basin led to a wetland, and whether this catch basin was clogged. After discussion, a motion was made and seconded that the complaint should be dismissed prior to investigation by a Complaint Review Team. The motion passed unanimously.

#### **C. Report from Course Subcommittee**

Ms. Wood stated that the subcommittee has not met.

#### **D. Discussion requiring the handling of future appeals**

Ms. Wood stated that she and Ms. Commerford had recently had a meeting with Sal Giorlandino who is the Acting Chief Presiding Officer of MassDEP's Office of Appeals and Dispute Resolution ("OADR") regarding whether OADR would be able to assist the Board with future appeal hearings. Mr. Giorlandino told Ms. Wood and Ms. Commerford that a new person – Tim Jones who is currently working for MassDEP's Office of General Counsel in the Western Regional Office – will be joining the OADR staff effective October 13<sup>th</sup> and that he has some 21E-related experience. Ms. Wood reported that Mr. Giorlandino indicated that OADR would be willing to assist the Board with upcoming appeal hearings and understood that the Board may be having two cases enter into the appeal process soon. She also stated that Mr. Giorlandino said that OADR would be open to have a hearing officer hear the appeals as the sole hearing officer or as a member of a panel with two Board members.

Mr. Luhrs asked Ms. Commerford about the possibility of having Laurel Mackay or some other attorney at MassDEP with 21E-related experience being loaned back to OADR for the purpose of serving as a hearing officer for an LSP Board appeal, a possibility that was raised at last month's meeting. Ms. Commerford stated that she did not believe it would be easy to identify any other MassDEP attorneys who would have time to act as a hearing officer for the Board.

After some discussion, the consensus of the Committee was that Ms. Commerford and Ms. Wood, along with one or two other Board members, should meet with Mr. Jones prior to the October Committee meeting to inquire about his 21E experience. At the October meeting, the Committee will discuss whether upcoming appeals would be best handled by Mr. Jones as the sole hearing officer or as a member of a panel along with two Board members. The Committee also instructed Board staff to mail out Orders to Show Cause in the two cases where the Board recently made initial decisions as soon as they are ready and instruct the LSPs to mail any responses to MassDEP's OADR.

## **5. New Business**

### **A. Request for retroactive approval of a course to satisfy the terms of an ACO with the Board**

Ms. Wood stated that an LSP who had entered into an Administrative Consent Order (ACO) with the Board to resolve a disciplinary case had requested retroactive approval to take a certain professional education course. The ACO required the LSP to obtain a number of additional continuing education credits from courses in certain fields. The ACO specified that the LSP was to seek the Board's approval of each course before taking it. Ms. Wood noted that the Committee had received a similar request from another LSP several months ago. In that instance, the Committee had voted to approve the course retroactively on a vote of 4 to 3 and members who had voted in favor had reasoned that they would retroactively approve the course because they would have approved it if the LSP had requested prior approval. Ms. Wood stated that the particular course for which this LSP was seeking retroactive approval does meet the requirement in his ACO with the Board to take a course in vapor intrusion. After discussion, a motion was made and seconded to approve the LSP's request to approve the course retroactively. The motion passed unanimously.

## **6. Future Meetings**

The Committee is scheduled to meet on October 29 at a location to be determined. The Committee is also scheduled to meet on December 11 at a location to be determined.

## **7. Adjournment:** The meeting was adjourned at 1:45 p.m.